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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

THE UNITED STATES OF AMERICA,) Case No. 1:22-CR-00019-DAD-BAM
)
 Plaintiff,) **STIPULATION REGARDING
 EXCLUDABLE TIME PERIODS UNDER
 SPEEDY TRIAL ACT; AND FINDINGS
 AND ORDER**
vs.)
)
JOSHUA DAVID HARRINGTON,)
)
 Defendant.)
)

This matter is set for status conference on June 8, 2022. As set forth below, the parties now move, by stipulation, to continue the status conference hearing to September 14, 2022.

On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice”. Under General Order 618, a judge “may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued on March 17, 2020 . . . with additional findings to support the exclusion in the Judge’s discretion.” General Order 618, (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case exceptions” to General Order 618’s provisions “at the

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1 discretion of that Judge or upon the request of counsel, after consultation with
 2 counsel and the Clerk of the Court to the extent such an order will impact court staff
 3 and operations.” General Order 618, (E.D. Cal. May 13, 2020). This, previous, and
 4 subsequent General Orders were entered to address public health concerns related to
 5 COVID-19.
 6

7 Although the General Orders address the district-wide health concern, the
 8 Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision
 9 “counteract[s] substantive openendedness with procedural strictness,” “demand[ing]
 10 on-the-record findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509
 11 (2006). “[W]ithout on-the-record findings, there can be no exclusion under” §
 12 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at 509;
 13 *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000)
 14 (explaining that a judge ordering an ends-of-justice continuance must set forth
 15 explicit findings on the record “either orally or in writing”).
 16

17 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as
 18 both mandatory and inexcusable — General Orders 611, 612, and 617 require specific
 19 supplementation. Ends-of-justice continuances are excludable only if “the judge
 20 granted such continuance on the basis of his findings that the ends of justice served
 21 by taking such action outweigh the best interest of the public and the defendant in a
 22 speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless
 23 “the court sets forth, in the record of the case, either orally or in writing, its reason or
 24 finding that the ends of justice served by the granting of such continuance outweigh
 25 the best interests of the public and the defendant in a speedy trial.” *Id.* The General
 26 Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4).
 27 Although the Speedy Trial Act does not directly address continuances stemming from
 28

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1 pandemics, natural disasters, or other emergencies, this Court has discretion to order
2 a continuance in such circumstances.

3 **STIPULATION**

4 1. By previous order, this matter was set for a status conference hearing on
5 June 8, 2022.

6 2. Through this stipulation, defendant moves to continue the status
7 conference hearing until September 14, 2022, and to exclude time between June 8,
8 2022, and September 14, 2022.

9 3. The parties agree and stipulate, and request that the Court find the
10 following:

11 a. The government has produced the discovery related to this case,
12 either directly to counsel and/or made available for inspection and copying.

13 b. Counsel for defendant desires additional time to complete a
14 review of the discovery, consult with her client, conduct investigation and research,
15 conduct plea negotiations, and to otherwise prepare for trial.

16 c. Counsel for defendant believes that failure to grant the above-
17 requested continuance would deny him the reasonable time necessary for effective
18 preparation, taking into account the exercise of due diligence.

19 d. The government does not object to the continuance.

20 e. Based on the above-stated findings, the ends of justice served by
21 continuing the case as requested outweigh the interest of the public and the
22 defendant in a trial within the original date prescribed by the Speedy Trial Act.

23 f. For the purpose of computing time under the Speedy Trial Act, 18
24 U.S.C. § 3161, et seq., within which trial must commence, the time period of June 8,
25 2022 to September 14, 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. §

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1 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by
2 the Court at defendant's request on the basis of the Court's finding that the ends of
3 justice served by taking such action outweigh the best interest of the public and the
4 defendant in a speedy trial.

5 4. Nothing in this stipulation and order shall preclude a finding that other
6 provisions of the Speedy Trial Act dictate that additional time periods are excludable
7 from the period within which a trial must commence.
8

9 **IT IS SO STIPULATED.**

10
11 Dated: May 31, 2022

12 */s/ Serita Rios*
13

14 **Serita Rios**
Attorney for Defendant

15 Dated: May 31, 2022

16 */s/ Kimberly Sanchez*
17

18 **Kimberly Sanchez**
Assistant U.S. Attorney

19
20 **ORDER**

21 IT IS SO ORDERED that the status conference is continued from June 8, 2022, to
22 **September 14, 2022, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe.** Time is
23 excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

24 IT IS SO ORDERED.
25

26 Dated: June 1, 2022

27 */s/ Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE